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# NASA Procedural Requirements

**NPR 3713.2**

Effective Date: May 08, 2009

Expiration Date: May 08, 2014

**COMPLIANCE IS MANDATORY**[Printable Format \(PDF\)](#)

Request Notification of Change

(NASA Only)

**Subject: Alternative Dispute Resolution for Discrimination Complaints****Responsible Office: Office of Diversity & Equal Opportunity**[| TOC](#) | [Preface](#) | [Chapter1](#) | [Chapter2](#) | [Chapter3](#) | [Chapter4](#) | [AppendixA](#) | [AppendixB](#) | [AppendixC](#) | [ALL](#)

## Appendix C. Forms

This Appendix includes forms related to ADR which are recommended for use at all NASA Centers. They include:

C.1 Mediation Election Form.

C.2 Agreement to Mediate.

C.3 Sample Settlement Agreement.

C.4 Required language for settlement agreements involving age discrimination.

C.5 Evaluation for party comments on experience with mediation.

C.6 Evaluation for completion by mediators.

C.7 Form for reporting on compliance with terms of Settlement Agreements.

C.8 Reporting on Compliance with EEO Settlement Agreement.

C.9 Reporting on Compliance with EEO Settlement Agreement.

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Form C-1

**Form C.1 – Mediation Election Form**

National Aeronautics and Space Administration  
\_\_\_\_\_  
Center  
Office of Diversity and Equal Opportunity

**Election of Mediation**

To: [Complainant's name]  
  
Date:  
  
From:  
  
Subject: Opportunity to Elect Mediation

During the initial counseling session with the EEO counselor, you were advised that you have the option of choosing to participate in mediation to attempt to resolve your complaint of discrimination. Many employees and applicants for employment find mediation to be a good way to develop an acceptable outcome that will resolve their complaints.

If you do not choose mediation your complaint will continue in the regular informal complaint process. If you do choose mediation and are unable to reach a resolution you find acceptable within the ninety-day period allotted to that process, you will have lost no rights -- your complaint will return to regular processing just as if mediation had not occurred.

**( ) Yes, I wish to participate in mediation of my EEO complaint.**

**( ) No, I do not wish to participate in mediation.**

\_\_\_\_\_

\_\_\_\_\_  
[signature/date lines]

Please return this form to me as promptly as possible to the following address [insert EEO Office Address here]:

**Form C.2 "Agreement to Mediate"****AGREEMENT TO MEDIATE**

This agreement concerns the EEO Complaint of \_\_\_\_\_, NASA Docket No. \_\_\_\_\_. The parties signing below agree to engage in mediation in good faith to explore issues and options in an attempt to resolve matters in dispute. The parties agree to the following:

Mediation is voluntary and may be ended at any time by any party or the mediator(s).

The parties understand that the mediator(s) will not: decide anything; give legal or other professional advice; act as advocates for any party; or promote any particular outcome. The role of the mediator(s) is to listen; help the parties clarify their issues, interests, and concerns; and generally facilitate the parties' negotiations.

The parties understand that mediation is a confidential process, except as specifically provided in or waived in writing under applicable laws, and matters disclosed in mediation cannot be used as evidence in any subsequent administrative or judicial proceeding (except as such matters may be otherwise discoverable). The parties specifically agree that such confidentiality extends to their joint meetings as well as their private meetings with the mediator(s). In addition, until reduced in writing and signed by all parties, all terms of any offers, options, and agreements made in connection with the mediation are deemed *nonbinding proposals* and are confidential. A written agreement reached through mediation and signed by all parties will not be confidential, unless the parties specifically agree otherwise in writing. Confidentiality is not available and is waived by everyone signing below as to: threats of imminent harm or incidents of violence occurring during mediation, criminal acts or plans to commit criminal acts, and fraud.

The mediator(s) will not voluntarily testify on behalf of any party. The parties agree not to subpoena mediator(s) or the mediator(s) records. The parties understand that the mediator(s) destroy their notes after the mediation and that any documents submitted to the mediator(s) by any party are returned to the submitting party or destroyed. The parties agree that the mediator(s) will not be held liable for any claim arising from the mediation process. Where required by the court or administrative body referring the dispute to mediation, the mediator(s) may submit a report to that court or administrative body, but the report will contain only information as to: whether the parties attended mediation, whether mediation has ended, and whether an agreement resolving the dispute was reached or not.

If a settlement is reached, the agreement shall be reduced to writing and when signed shall be binding upon the parties. If a settlement is not reached, the matter in dispute will proceed as if mediation had not occurred.

Since the parties are negotiating concerning matters that affect their legal rights, the parties have the right and opportunity to consult with legal counsel at any time and are encouraged to do so.

\_\_\_\_\_  
\_\_\_\_\_  
[signature/date lines for all persons attending the mediation]

**Form C.3 Settlement Agreement at the Informal Stage (Form C.5 Includes Additional Clauses Needed for Age Discrimination Cases.)**

**Note:** While this agreement has been reviewed and approved by the Office of General Counsel, Center staff should seek Chief Counsel's approval of the contents of particular Settlement Agreements to assure the documents are sufficient to deal with Center needs and the particulars of a given case.

**SETTLEMENT AGREEMENT****SETTLEMENT AGREEMENT**

In the matter of \_\_\_\_\_

NASA Docket Number \_\_\_\_\_ (list informal and formal complaints and other agencies' docket numbers if global settlement.)

This Settlement Agreement (hereinafter "Agreement") is entered into by and between \_\_\_\_\_ (hereinafter "Aggrieved Individual") and National Aeronautics and Space Administration (hereinafter "Agency" or "NASA") to make full and final settlement of the matters raised in Aggrieved Individual's Equal Employment Opportunity (EEO) complaint (case numbers \_\_\_\_\_) against the Agency.

In order to resolve the matters in dispute without further administrative processes, litigation, expense, and delay, the Aggrieved Individual and the Agency agree as follows.

**Spell out terms of agreement.**

**Insert OWPBA language if a case in which the complainant is alleging age discrimination.**

By executing this Agreement, Aggrieved Individual agrees to withdraw his/her EEO complaint No \_\_\_\_\_ and any and all other pending complaints (set forth with specificity: case numbers \_\_\_\_\_) involving his/her employment with the Agency. In addition, he/she also waives any and all rights to file complaints with, or appeals to, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the negotiated grievance process or other administrative fora, and civil litigation arising out of matters or events prior to the execution of this Agreement.

This Agreement shall not constitute an admission of liability or fault on the part of the Agency or its officers or employees. By withdrawing his/her complaint(s), the Aggrieved Individual does not concede or admit that his/her allegations of discrimination were without merit.

This Agreement may be used as evidence in a subsequent proceeding in which either of the parties allege a material breach of this Agreement.

6. By executing this Agreement, Aggrieved Individual acknowledges that he/she has entered into this Agreement voluntarily and that the Agency has not imposed any undue hardship, duress, or coercion in connection with the execution of this document.
7. This Agreement represents and expresses the entire agreement between the Agency and the Aggrieved Individual resolving the above-cited complaint(s) and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter hereof. If other promises, oral or written, have been made, they are not binding. This document cannot be altered, modified, withdrawn, rescinded, or supplemented in any manner after the date on which it becomes effective unless mutually agreed in writing by all parties.
8. This Agreement shall be binding upon the Aggrieved Individual, as well as the Aggrieved Individual's heirs, assigns, representatives, proxies, guardians, or any other person or entity acting on behalf of, or at the behest of, the Aggrieved Individual's heirs, assigns, representatives, proxies, or guardians.
9. The Aggrieved Individual expressly agrees not to use this Agreement and not to permit any other person to use this Agreement in any judicial or administrative proceeding as evidence of or to attempt to prove the existence of discrimination/ reprisal or other adverse action or prohibited personnel practice. Nothing in this Agreement, however, shall prevent either party from pursuing the remedies set forth in 29 CFR § 1614.504.
10. If the Aggrieved Individual believes that the Agency has not complied with the terms of this Agreement, he/she may request that the terms be specifically implemented, or alternatively, that the complaint be reinstated for further processing at the point processing closed, in accordance with the procedures set forth in 29 CFR § 1614.504. Any such request must be made within thirty (30) days of the date the Aggrieved Individual knew or should have known of the noncompliance and must be forwarded to the ASSISTANT ADMINISTRATOR FOR THE OFFICE OF DIVERSITY AND EQUAL OPPORTUNITY, NASA HEADQUARTERS, WASHINGTON, DC 20546 with an explanation as to why he/she believes that the Agreement has not been carried out.
11. Each of the respective rights and obligations of the parties hereunder shall be deemed independent and may be enforced independently, irrespective of any other rights and obligations set forth herein.

11. Each of the respective rights and obligations of the parties hereunder shall be deemed independent and may be enforced independently, irrespective of any other rights and obligations set forth herein.
12. The parties agree that any signatures affixed to this Agreement via photocopy or facsimile are valid and enforceable as substitutes for original signatures.
13. In witness whereof, the Aggrieved Individual hereby executes this Agreement, acknowledging that its terms and conditions have been fully understood and that an adequate period of time has been afforded to allow consideration of said terms and conditions.

_____	_____
Aggrieved Individual	Date

_____	_____
Aggrieved Individual Representative	Date

_____	_____
NASA Settlement Official	Date

**Form C.4 Settlement Agreement at the Formal Stage (Form C.5 Includes Additional Clauses Needed for Age Discrimination Cases.)**

**Note:** While this agreement has been reviewed and approved by the Office of General Counsel, Center staff should seek Chief Counsel's approval of the contents of particular Settlement Agreements to assure the documents are sufficient to deal with Center needs and the particulars of a given case.

**SETTLEMENT AGREEMENT****SETTLEMENT AGREEMENT**

In the matter of \_\_\_\_\_

NASA Docket Number \_\_\_\_\_ (list informal and formal complaints and other agencies' docket numbers if global settlement.)

1. This Settlement Agreement (hereinafter "Agreement") is entered into by and between \_\_\_\_\_ (hereinafter "Complainant") and National Aeronautics and Space Administration (hereinafter "Agency" or "NASA") to make full and final settlement of the matters raised in Complainant's Equal Employment Opportunity (EEO) complaint (case numbers \_\_\_\_\_) against the Agency.
2. In order to resolve the matters in dispute without further administrative processes, litigation, expense, and delay, the Complainant and the Agency agree as follows.

**Spell out terms of agreement.****Insert OWPBA language in cases in which age discrimination has been alleged.**

3. By executing this Agreement, Complainant agrees to withdraw his/her EEO complaint No \_\_\_\_\_ and any and all other pending complaints (set forth with specificity: case numbers \_\_\_\_\_) involving his/her employment with the Agency. In addition, he/she also waives any and all rights to file complaints with, or appeals to, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the negotiated grievance process or other administrative fora, and civil litigation arising out of matters or events prior to the execution of this Agreement.

4. This Agreement shall not constitute an admission of liability or fault on the part of the Agency or its officers or employees. By withdrawing his/her complaint(s), the Complainant does not concede or admit that his/her allegations of discrimination were without merit.
5. This Agreement may be used as evidence in a subsequent proceeding in which either of the parties allege a material breach of this Agreement.
6. By executing this Agreement, Complainant acknowledges that he/she has entered into this Agreement voluntarily and that the Agency has not imposed any undue hardship, duress, or coercion in connection with the execution of this document.
7. This Agreement represents and expresses the entire agreement between the Agency and the Complainant resolving the above-cited complaint(s) and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter hereof. If other promises, oral or written, have been made, they are not binding. This document cannot be altered, modified, withdrawn, rescinded, or supplemented in any manner after the date on which it becomes effective unless mutually agreed in writing by all parties.
8. This Agreement shall be binding upon the Complainant, as well as the Complainant's heirs, assigns, representatives, proxies, guardians, or any other person or entity acting on behalf of, or at the behest of the Complainant's heirs, assigns, representatives, proxies, or guardians.
9. The Complainant expressly agrees not to use this Agreement and not to permit any other person to use this Agreement in any judicial or administrative proceeding as evidence of or to attempt to prove the existence of discrimination/reprisal or other adverse action or prohibited personnel practice. Nothing in this Agreement, however, shall prevent either party from pursuing the remedies set forth in 29 CFR § 1614.504.
10. If the Complainant believes that the Agency has not complied with the terms of this Agreement, he/she may request that the terms be specifically implemented, or alternatively, that the complaint be reinstated for further processing at the point processing closed, in accordance with the procedures set forth in 29 CFR § 1614.504. Any such request must be made within thirty (30) days of the date the Complainant knew or should have known of the noncompliance and must be forwarded to the ASSISTANT ADMINISTRATOR FOR THE OFFICE OF DIVERSITY AND EQUAL OPPORTUNITY, NASA HEADQUARTERS, WASHINGTON, DC 20546 with an explanation as to why he/she believes that the Agreement has not been carried out.
11. Each of the respective rights and obligations of the parties hereunder shall be deemed independent and may be enforced independently, irrespective of any other rights and obligations set forth herein.

12. The parties agree that any signatures affixed to this Agreement via photocopy or facsimile are valid and enforceable as substitutes for original signatures.

13. In witness whereof, the Complainant hereby executes this Agreement, acknowledging that its terms and conditions have been fully understood and that an adequate period of time has been afforded to allow consideration of said terms and conditions.

_____	_____
Complainant	Date

_____	_____
Complainant Representative	Date

_____	_____
NASA Settlement Official	Date

**Form C.5 Language to Include in Settlement Agreements for Cases Involving Age Discrimination:<sup>6</sup>****Option A:**

Complainant hereby acknowledges that the Agency has provided Complainant a period of time not less than 21 days to consider the terms and conditions contained in this Agreement prior to signing the Agreement.

**OR --****Option B:**

Complainant hereby acknowledges that he/she was fully informed by the Agency of rights under the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act, including the right to a period of time not less than 21 days to consider the terms and conditions contained in this Agreement prior to signing. By signing this Agreement, Complainant acknowledges that he/she has knowingly and voluntarily waived rights or claims under the laws above, in exchange for consideration. Complainant affirms that this decision was made knowingly, voluntarily, and without any undue hardship, duress, or coercion by the Agency or its employees or representatives.

**In all cases:**

Complainant acknowledges that he/she was advised of the right to and advisability of consulting with an attorney prior to signing this agreement. If Complainant had already retained counsel, Complainant acknowledges that his/her attorney has reviewed and explained the provisions of this Agreement to him/her and that the Agency provided sufficient time for this purpose.

Complainant is hereby notified that the terms and conditions contained herein will become binding and enforceable seven (7) calendar days following the date of signing of this Agreement. At any time prior to expiration of this seven-day period, Complainant may revoke this Settlement Agreement for any reason.

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<sup>6</sup> The term "Complainant" is used throughout this sample form, denoting that the complaint was settled at the formal stage. For cases involving age discrimination at the informal stage, the term "aggrieved individual" is used.

**Form C.6 -- Evaluation to be Distributed at the End of Mediation:**

*(Copies of the following evaluation form should be distributed to each person who attended as a party or representative in mediation, along with an envelope in which to return the evaluation form. The mediator should be told to gather the sealed envelopes and submit them to the ADR Program Director. Generally, the parties should be asked to complete the survey when mediation ends but before they leave the mediation site; however, a party who wishes to submit the form later may do so (provide an envelope addressed to the ADR Program Director).*

**MEDIATION PARTICIPANT SURVEY**

To help NASA to continue to improve its ADR program and provide outstanding customer service, we would appreciate your taking a few minutes to answer the following questions. There is room at the end for comments, if you like. The information below is confidential and will be used solely for program evaluation purposes. It is not necessary to include your name unless you wish to do so.

In this mediation, I was the:

- ☐ Aggrieved Complainant
- ☐ Management representative
- ☐ A representative
- ☐ Other

Center where mediation occurred: \_\_\_\_\_

At which phase of the process is this mediation occurring?

- ☐ PreCounseling Stage
- ☐ Formal Complaint stage

**The Process**

1a. Prior to mediation, the opportunity for mediation was:

- ☐ Fully explained to me
- ☐ Adequately explained to me
- ☐ Poorly explained to me
- ☐ Not explained at all to me

b. Prior to the mediation, the mediation process was:

- ☐ Fully explained to me
- ☐ Adequately explained to me
- ☐ Poorly explained to me
- ☐ Not explained at all to me

2. The mediation was scheduled within:

- ☐ 5-15 days of the initial complaint
- ☐ 16-25 days of the initial complaint
- ☐ 26-35 days of the initial complaint
- ☐ 36 or more days of the initial complaint

3. The mediator explained the mediation process to me in a way that allowed me to fully understand the process.
- ☐ Strongly Agree
  - ☐ Agree
  - ☐ Disagree
  - ☐ Strongly Disagree
4. I had a full opportunity to present my views.
- ☐ Strongly Agree
  - ☐ Agree
  - ☐ Disagree
  - ☐ Strongly Disagree
5. If I had another dispute or problem like this one, I would want to try mediation to resolve it.
- ☐ Strongly Agree
  - ☐ Agree
  - ☐ Disagree
  - ☐ Strongly Disagree
6. I would recommend mediation to others at the Center.
- ☐ Strongly Agree
  - ☐ Agree
  - ☐ Disagree
  - ☐ Strongly Disagree

If you disagree, please provide more information.

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*The Mediator*

Name(s) of mediator(s): \_\_\_\_\_  
\_\_\_\_\_

- 7a. The mediator listened well.
- ☐ Strongly Agree
  - ☐ Agree
  - ☐ Disagree
  - ☐ Strongly Disagree

- b. The mediator treated everyone fairly.
- ☐ Strongly Agree
  - ☐ Agree
  - ☐ Disagree
  - ☐ Strongly Disagree
8. The mediator remained neutral and impartial.
- ☐ Strongly Agree
  - ☐ Agree
  - ☐ Disagree
  - ☐ Strongly Disagree
9. The mediator worked with both sides to help reach a fair resolution.
- ☐ Strongly Agree
  - ☐ Agree
  - ☐ Disagree
  - ☐ Strongly Disagree
10. I was treated with respect during the mediation.
- ☐ Strongly Agree
  - ☐ Agree
  - ☐ Disagree
  - ☐ Strongly Disagree

### The Result

11. Please circle the appropriate answer:
- a. Mediation is completed and we reached a resolution.
  - b. Mediation is still open or continued.
  - c. Mediation is completed, but we did not reach a resolution.
12. If you reached agreement, do you believe it is as fair and realistic as reasonably possible?
- ☐ Yes
  - ☐ No
- If no, why not? \_\_\_\_\_
- \_\_\_\_\_
13. If no agreement was reached, do you believe the mediation was still helpful?
- ☐ Very Helpful
  - ☐ Somewhat Helpful
  - ☐ Slightly Helpful
  - ☐ Not Helpful

14. Do you have any comments that might help us improve this program?

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Name and contact information (voluntary):

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Thank you for taking your time to assist us in trying to continually improve our program.

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Form C-7

**Form C.7 Evaluation for Completion by Mediators:**

**For the case you just completed, please answer the following questions (explain your answers if needed in the space under each question):**

- a. After you were assigned this case, were you promptly given adequate information by intake personnel on:
- Nature of case and issues? ☐ yes ☐ no
  - Parties' & representatives' contact info? ☐ yes ☐ no
  - Any special needs or issues? ☐ yes ☐ no

Comments:

- b. Did you find intake personnel prompt and helpful regarding:
- Arranging place/space for mediation? ☐ yes ☐ no
  - Providing forms, copying, and administrative help? ☐ yes ☐ no
  - Providing help/suggestions for travel and accommodations? ☐ yes ☐ no

Comments:

- c. Did you find that the parties adequately understood their ADR options and had at least a preliminary understanding of what ADR was about? ☐ yes ☐ no

Comments:

- d. Please provide any other comments and suggestions for improvement in the ADR program:

- e. Name and contact information.

**THANK YOU!**

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Form C-8

**Form C-8. Reporting on Compliance with EEO Settlement Agreement****OFFICE OF DIVERSITY AND EQUAL OPPORTUNITY****INFORMAL****Name:** \_\_\_\_\_**Case #:** \_\_\_\_\_**Full Compliance (on all terms)**☐**Partial Compliance**☐**Identify terms and state reason(s) for partiality:**

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**Anticipated date for full compliance:** \_\_\_\_\_**NonCompliance**☐**Reasons for noncompliance:**

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**\*Attach report if****ASA Form No. \_\_\_\_ April 2009**

Form C-9

**Form C-9. Reporting on Compliance with EEO Settlement Agreement****OFFICE OF DIVERSITY AND EQUAL OPPORTUNITY****FORMAL****Name:** \_\_\_\_\_**Case #:** \_\_\_\_\_**Full Compliance (on all terms)**☐**Partial Compliance**☐**Identify terms and state reason(s) for partiality:**

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**Anticipated date for full compliance:** \_\_\_\_\_**NonCompliance**☐**Reasons for noncompliance:**

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**\*Attach report if****NASA Form No. \_\_\_\_ April 2009**

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